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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,330	03/01/2002	Fatih M. Ozluturk	I-2-0080.8US	3365

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VOLPE AND KOENIG, P.C.  
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UNITED PLAZA, SUITE 1600  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103

EXAMINER

DAVIS, TEMICA M

ART UNIT	PAPER NUMBER
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2681

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/086,330

Applicant(s)

OZLUTURK ET AL.

Examiner

Temica M. Davis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-7 and 1-4 of copending Application Nos. 10/210,920 and 10/210,961, respectively. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending applications and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The claims of the present application and the claims of the above mentioned applications are drawn to a method of regulating transmission power by transmitting a periodic signal at an initial predetermined power level, repeatedly transmitting the periodic signal, each transmission occurring at successively higher power levels, receiving a confirmation signal at a specific power level and terminating transmission of the periodic signal when a confirmation signal is received and/or maintaining a power level present at a time that a confirmation signal is received.

3. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of the following U.S. Patents: 6,507,745, 6,493,563, 6,571,105, 6,577,876, 6,519,474, 6,490,462, 6,181,949, 6,606,503 and 5,841,768. Although the conflicting claims are not identical, they are not patentably distinct from each other because all claims are drawn to a method of regulating transmission power by transmitting a periodic signal at an initial predetermined power level, repeatedly transmitting the periodic signal, each transmission occurring at successively higher power levels, receiving a confirmation signal at a specific power level and terminating transmission of the periodic signal when

a confirmation signal is received and/or maintaining a power level present at a time that a confirmation signal is received.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Dent, U.S. Patent No. 5,430,760.

Regarding claim 1, Dent discloses a method for operating a subscriber unit to regulate transmission power, comprising means for transmitting a periodic signal (access message) at an initial predetermined power level, repeatedly transmitting the periodic signal each transmission occurring at successively higher power levels (col. 8, lines 1-18, col. 9, lines 3-12), receiving a confirmation signal at a specific power level which is based, in part upon said periodic signal (col. 8, lines 13-23) terminating transmission of the periodic signal and maintaining a power level at a time that the confirmation signal is received at said subscriber unit (col. 8, lines 13-23).

Regarding claim 2, Dent discloses the method of claim 1 wherein said initial predetermined power level is lower than a power level required for detection by a another communicating station as evidenced by the fact that the base station does not detect the access message until the power level is increased (col. 8, lines 1-18).

Regarding claim 6, Dent discloses the method of claim 1 wherein said periodic signal comprises a short code (i.e. 128-bit codeword) (col. 5, lines 13-20, lines 39-48) and said subscriber unit periodically modifies said short code (i.e., + or - the number of chips to be adjusted) (col. 11, lines 37-52).

Regarding claim 7, Dent discloses a method for operating a subscriber unit for regulating transmission power comprising transmitting a periodic signal at an initial predetermined power level, repeatedly retransmitting said periodic signal, each retransmission occurring at successively high power level (col. 8, lines 1-18, col. 9, lines 3-12), maintaining a power level present upon receipt of a confirmation signal (col. 8, lines 13-23); and employing said maintained power level upon initiation of a subsequent operation (i.e., for call set-up) (col. 16, lines 2-19).

Regarding claim 8, Dent discloses the method of claim 7 wherein said initial predetermined power level is lower than a power level required for detection by a another communicating station as evidenced by the fact that the base station does not detect the access message until the power level is increased (col. 8, lines 1-18).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dent.

Regarding claim 3, Dent discloses the subscriber unit of claim 1 as described above. Dent, however, fails to specifically disclose transmitting an access signal at the maintained power level.

The examiner contends, however, that at the time of invention, such transmission would have been obvious to one of ordinary skill in the art since it is known in the art that once a desired power level is reached between a base station and a mobile station, it would be beneficial to the system to maintain that power level in order to enhance system performance such as preventing or lessening interference in the system.

Regarding claim 9, Dent discloses the subscriber unit of claim 7 as described above. Dent, however, fails to specifically disclose wherein the subsequent operation includes means for transmitting an access signal.

The examiner contends, however, that at the time of invention, such an implementation would have been obvious to a person of ordinary skill in the art since it is known in the art that subscriber units make multiple phone calls in a telephone communication system, and because of this, the subscriber would have to attempt to initiate further or subsequent calls by using an access signal.

***Allowable Subject Matter***

8. Claims 4, 5 and 10-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 4, prior art fails to suggest or render obvious wherein an access signal comprises an access code and the periodic signal comprises a short code which is shorter than the access code.

Regarding claims 5 and 11-13, they are indicated allowable based on their dependence of allowable claims 4 and 10.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Temica M. Davis whose telephone number is (703) 306-5837. The examiner can normally be reached Monday through Friday (alternate Fridays) from 9:00am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erika Gary can be reached on (703) 308-0123. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



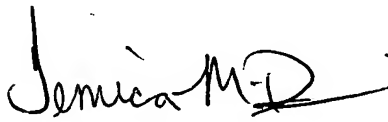
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

Temica M. Davis  
Examiner  
Art Unit 2681

TMD  
March 19, 2004



**TEMICA M. DAVIS**  
**PATENT EXAMINER**